IN THE

Supreme Court of the United States

—o—o—

October Term, 1945

No.————

In Bankruptcy

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MICHAEL P. JORDAN, *Petitioner,*

vs.

FEDERAL FARM MORTGAGE CORPORATION, FEDERAL LAND BANK OF OMAHA, STOCK YARDS NATIONAL BANK, SOUTH OMAHA; UNION CENTRAL LIFE INSURANCE COMPANY, A. L. JOHNSON, B. J. BERGESEN, THOMAS McCANN, JOHN DRAYTON, *Respondents.*

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BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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OPINIONS BELOW

The two important and controlling issues involved in this case are, first, was Petitioner a farmer, and, second, if not should his estate have been administered under Chapter XII of the Bankruptcy Act as he petitioned or otherwise under said Act as provided for therein. The

Commissioner denied petitions to dismiss and held he was a farmer. The District Court on petitions for review reversed the Commissioner, held he was not a farmer and dismissed all proceedings, and the Circuit Court, on appeal, affirmed said decision.

SPECIFICATIONS OF ERRORS

I.

The Circuit Court erred in holding that under the facts in the record the Petitioner, Michael P. Jordan, was not a farmer within the definition of Section 75r.

II.

Committed error in dismissing all proceedings, as Petioner was entitled to have his estate administered in Bankruptcy even though not a farmer, and not entitled to administration under Section 75 and especially so since his status under Section 75n and under his Amended Petition under Section 75s was that of an adjudicated bankrupt, and he having filed petition for administration under Chapter XII, if denied administration under Section 75.

ARGUMENT

Section 75r in the most accurate, plain and definite language defines a farmer. In *First National Bank and Trust Company vs. Beach*, 301 U. S. 435, 57 Sup. Ct. Rep. 801, this Court, in the clearest and most concise language, stated what facts brought a debtor within the definition, stating there are two branches to the definition "are not equivalent. They were used by way of contrast. Occasions must have been in view when the receipts of income derived from farming operations would make a farmer out of someone who personally and primarily engaged in

different activities." "The totality of the facts is to be considered and appraised." The farming activities of Beach were nominal as compared with Petitioner here; his rentals were the controlling factor as are the rentals here. "The results will be the same, however, though the farming and leasing be viewed as disconnected and not as parts of composite whole. In that view the farming is still the business; the leases are then investments more profitable than the business but leaving it unchanged." A debtor remains the more a farmer if his leasing is enforced by Court and under necessity of avoiding loss of title. If the above by this Court is to be accepted then to hold Petitioner here not a farmer is a flagrant refusal to submit to the decisions of this Court. This Circuit Court, in its own decision in *McLean vs. Federal Land Bank*, 130 Fed. (2d) 123, where the record shows that debtor lost all title to his real estate, was employed some three years by others as a farm laborer, subsequently reacquired title, was personally liable in the foreclosure of a mortgage previously negotiated by him, was held to be a farmer. Here Petitioner asserts he has never lost title to his ranch, has at all times devoted all his time to the care, preservation and refinancing of the same, has retained all his farming equipment, is personally liable on mortgages pending in the foreclosure by the same bank (Sup. Tr. 2). He has applied all rentals on indebtedness against his ranch yet this same Court says he is not a farmer. The case of *Mulligan vs. Federal Land Bank*, 129 Fed. (2d) 438, cited as authority for its ruling has no possible application. The Mulligans vountarily rented their farm, moved from it to the city of Alliance, concluded all farming operations, sold all live stock and farm machinery and for three years voluntarily lived and resided in said city. There could not have been a more delib-

erate and definite conclusion of all farming operations or a more open and deliberate change in vocation.

"Enforced dispossession and termination of farming operations by legal proceedings does not effect a change in vocation."

In re Schermerhorn, 41 Fed. Supp. 447, on 449.

Williams v. Great Southern Life Ins. Co., 124 Fed. (2d) 38, on 40.

Noble v. Hopewell National Bank, 98 Fed. (2d) 623, on 626.

Layton v. Thayne, 133 Fed. (2d) 287, on 290.

The Circuit Court's assertion that debtor had lost title to his ranch is nothing more than an assumption as he claims ownership notwithstanding the Sheriff's Deed, which issue was never adjudicated because of his proceedings being dismissed.

II.

The Court was wholly without authority to dismiss the proceedings. Upon filing his petition with the Clerk of the District Court, Petitioner's status became that of an adjudicated bankrupt (Sec. 75n). On May 4, 1945, he filed his Amended Petition under Section 75s, asking to be adjudged a bankrupt (Tr. 22). As such adjudicated bankrupt, if not a farmer entitled to the benefits of Section 75, then he was entitled to the benefits of the General Bankruptcy Act. After he was denied such, his proceedings dismissed in the District Court, and appeal taken to the Circuit Court, he filed a Petition in the District Court asking that his estate be administered under Chapter XII of the Bankruptcy Act. The ownership of the ranch and many other issues remained unadjudicated. Both the District Court and on appeal the Circuit Court held they had no jurisdiction because of appeal pending from the ruling dismissing his proceedings because he was not a

farmer, which was the only issue adjudicated and involved in the appeal. The question of jurisdiction is always presentable to all Courts and at all times. Authorities certainly need not be cited in support of this kindergarten proposition. Petitioner cited *Wayne United Gas Company v. Owens-Illinois Glass Company*, 300 U. S. 131, 57 Sup. Ct. Rep. 382, in which this Court held that Bankruptcy Courts are Courts of equity, have no terms and can vacate their decrees so long as the case remains pending. Only by completely ignoring this cited decision could the Court say it was without jurisdiction. The case certainly remained pending.

MacKenzie v. Engelhard Co., 266 U. S. 131, 36 A. L. R. 416.

Brannon v. Commonwealth of Kentucky, 162 Ky. 350.

Union Joint Stock Land Bank v. Byerly, 310 U. S. 1, 60 Sup. Ct. Rep. 773 (dissenting opinion).

Kalb vs. Feuerstein, 308 U. S. 433, 60 Sup. Ct. Rep. 343.

In the MacKenzie case the Court states:

> "An appeal is a proceeding in the original cause and the suit is pending until the appeal is disposed of * * * when the final judgment was reached it determined the rights of (the parties) ad initio * * *"

In the Brannon case the Court held:

> "Where a decree has not been overruled, where it is subject to modification upon Motion, or where the Court might grant a re-hearing or where an appeal might have been taken * * * the case could not be said to have reached that stage where it could be said it was not pending in that Court."

In the Union Joint Stock Land Bank case, the Court states:

"Until disposition of the farmer's petition, he was entitled to the protection and benefit of the Act, and the Bankruptcy Court had exclusive jurisdiction of his property."

In the Kalb case the Court states:

"Dismissal of the proceeding did not constitute its final disposition where reinstatements was available."

Since Petitioner's cause remained pending, the District Court had jurisdiction to set aside its erroneous dismissal and administer his estate under Chapter XII, as he petitioned it so to do, his status being that of an adjudicated bankrupt and all his property being in the jurisdiction of the Bankruptcy Court under the provision of the Bankruptcy Act. It was a flagrant violation of the law to dismiss these proceedings and deny him all relief under the Bankruptcy Act.

Section 75n.

Chapter XII, Chandler Act.

Federal Land Bank v. Nalder, 116 Fed. (2d) 1004.

Baxter v. Savings Bank, 92 Fed. (2d) 404.

Paradise Land and Live Stock Co. v. Federal Land Bank, 108 Fed. (2d) 832.

In the Nalder case the Court states:

"The debtor remains a bankrupt and her estate is to be administered and her debts discharged as in other case of voluntary bankruptcy."

In the Baxter case, supra, the Court states:

"The proper procedure after nullifying all procedure under subsection s of Sec. 75 would have been to adjudicate and refer under Section 22 of the Act." 11 U. S. C. A., Section 45.

In the Paradise case the Court states, "Debtor invoked the provision of subsection 's'; it asked to be alleged a bankrupt," and was therefore entitled to have "the administration of its estate as a bankrupt"; yet here the Court says it has no jurisdiction and Petitioner is entitled to no relief. Had the District Court adjudicated all various issues presented to it and appeal taken therefrom, then it would have been discretionary with the District Court to entertain any further proceedings, but when it ignored all such issues and erroneously dismissed the entire proceedings, surely on petition it not only had authority to then hear and adjudicate not only the issues previously unadjudicated but it was its duty so to do and it was erroneous not so to do when the law clearly required it so to do and to give Petitioner the benefit of the Bankruptcy Act.

SUMMARY

The record shows that Petitioner was born and reared in the vicinity of his ranch, that through long years of hard labor, frugality and denial he accumulated his ranch of about 10,000 acres and about 1,200 head of cattle thereon. In 1932 a serious financial and business depression occurred. In 1934, 1935 and 1936 unprecedented drought prevailed throughout the Northwest, including Petitioner's ranch. He began the purchase of feed to avoid the starvation of his cattle; continually the price of feed increased; the value of cattle decreased; soon the cattle were all sold and applied on his indebtedness drawing 12 per cent. His ranch was then mortgaged and title thereto now demanded. His Debtor's Petition alleges a total indebtedness against his ranch as of March 20, 1945, of $73,000.00 and alleges an equity therein of $50,000.00 (Tr. 2 and 4). As breeding cows are now conservatively of the value of

$150.00 a head, had he been given the benefit of Section 75 or Chapter XII, 500 head of cattle would now liquidate his entire indebtedness. The responsibility and advisability of Section 75 rested exclusively with Congress. It was the responsibility of Congress to determine its necessity. Here the record not only shows that Petitioner has at all times been denied the benefits of the Act but the record also shows that said denial was without legal or moral justification. In its decision the Circuit Court, in substance, has rewritten the Act and defeated Congress in the exercise of its constitutional rights and duty.

To the extent that the Courts justly administer the law is there an abiding public faith in them and respect for law, order and for the judiciary. The Constitution intends that when all other Courts have failed, then this Court shall afford judicial protection.

Petitioner most respectfully petitions this Court to grant his Petition and afford him the benefits of the law as by Congress intended.

Respectfully submitted,

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Petitioner.

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